

STATEMENT OF
JAMES C. HANDLEY
REGIONAL ADMINISTRATOR
GREAT LAKES REGION
U.S. GENERAL SERVICES ADMINISTRATION
BEFORE THE
COMMITTEE ON HOMELAND SECURITY
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION AND OVERSIGHT
U.S. HOUSE OF REPRESENTATIVES
FEBRUARY 16, 2006



Good afternoon, Chairman Rogers and Members of the Subcommittee. Thank you for the opportunity to appear before you to discuss the General Services Administration's (GSA) role in the U.S. Border Patrol Integrated Surveillance and Intelligence System (ISIS). I am Jim Handley, Regional Administrator for GSA's Great Lakes Region (Region 5), and I am pleased to be here today to discuss the December 2004 GSA audit of the Federal Technology Service (FTS), particularly the contract awarded for the U.S. Border Patrol's Remote Video Surveillance (RVS) program and what we are doing to correct these errors.

BACKGROUND

In late 1998, the former Immigration and Naturalization Service Border Patrol approached our regional FTS for acquisition support, including network cabling, IT services, commodities, network maintenance and upgrades for the RVS program. Initially, individual orders were issued; however, due to anticipated requirements, it was determined that a Blanket Purchase Agreement (BPA) would better streamline the process and provide for quantity discounts. The BPA, with an estimated value of \$200 million, was awarded to *International Microwave Corporation* (IMC) on November 14, 2000. The BPA was established under the terms of IMC's position on the Federal Supply Schedule (FSS) Contract FSS70. IMC was subsequently acquired by *L3 Communications Incorporated* in 2003.

The BPA expired for new orders on May 5, 2004, although some work was ongoing through September 30, 2004. The BPA, however, did not account for all equipment and services provided in support of the Border Patrol's surveillance needs and there were ancillary equipment requirements and support not covered under the BPA which were procured under separate task orders.

GSA AUDIT

The December 14, 2004, Office of Inspector General (OIG) audit was part of a nationwide review requested by the GSA Administrator to answer the following question: Were procurements awarded and administered in accordance with the Federal Acquisition Regulations and the terms of the contracts utilized? As we found out, the answer to this question was no.

A copy of that final audit was provided to the Committee when it was released and GSA's Deputy Inspector General appeared before the Subcommittee on June 16, 2005, to discuss the audit in greater detail.

In its final report, the OIG raised several concerns, such as:

- the lack of competition in the awarding of the RVS contract
- the inappropriate contract for construction services
- inadequate contract administration and project management
- providing equipment without contractor approval
- ineffective management controls

I assure you that these concerns are currently being addressed on a detailed level within the Region.

PROJECT REFORMS

Mr. Chairman and Members of the Subcommittee, I agree with these findings of the OIG. There were definitely certain instances of inappropriate contracting practices. These practices were not specific to Region 5 but part of a larger problem that permeated FTS nationwide. This is not meant to excuse our actions in any way, but it is meant to reinforce the OIG's finding of environmental problems throughout the organization.

Since the receipt of the OIG audit and as a direct result of it, Region 5 has made tremendous strides in correcting the issues raised. Some of these actions were taken immediately while some have taken more time. This is a situation that will require a dedicated effort on our behalf to make sure this does not occur again. And I assure you, we are focusing our resources to resolve these issues.

Some of the actions we have taken on the regional and programmatic levels include:

- Putting management controls in place to ensure adequate review and documentation is provided;
- Replacing key managers with individuals who were experienced in their field and focused on customer service, quality of tasks, and adherence to procurement regulations;
- Conducting regular meetings with the Contractor and U.S. Customs and Border Protection to address any discrepancies in contracting procedures and contractor performance;
- Requiring a Memorandum of Understanding or Memorandum of Agreement with each task order to confirm GSA and customer roles and responsibilities;
- Consulting with the Office of General Counsel in our acquisition planning and execution;
- Limiting contracting authority to allow for more management control;
- Establishing a database to monitor every phase of the acquisition;
- Reviewing funds received, obligated, and invoiced between the two GSA financial centers;
- Validating all GSA financial data at the task order level to ensure funds and payment records match;
- Encouraging Contracting Officers to become more involved in task planning and encouraging customers to invite their contracting and financial management offices into discussions;
- Requiring that project funds be accepted only at the Director level or higher to ensure incoming work will be carried out effectively and efficiently;
- Instituting a regional remediation plan to review existing task orders and address any deficiencies or areas of concern;
- Establishing a Contract Review Board for pre-solicitation and post-award reviews;
- Reviewing all contract actions to ensure compliance with applicable regulations and policies;

- Revising performance measures to emphasize quality and eliminate the emphasis on volume and revenue; and
- Requiring a continued review of operating procedures to ensure pre- and post-award and contract administration is effectively carried out.

DISCIPLINARY ACTIONS

Mr. Chairman and Members of the Subcommittee, in addition to our actions mentioned above, disciplinary action was needed. Prior to this hearing, we provided the Subcommittee with a description of the disciplinary actions we have taken against certain GSA personnel as a result of the audit. In that letter, as well as in communication with the Subcommittee staff, we name the individuals involved, their positions and the nature and outcome of the disciplinary action taken against each. However, for the purposes of this open hearing, and because of Privacy Act considerations, I will limit my testimony today to briefly describing the general disciplinary process at GSA and addressing the questions we received from the Subcommittee.

1. How these cases happened at GSA?

As I have discussed previously, as a result of an OIG audit report on the FTS Client Support Center in GSA's Great Lakes Region, several improper task orders and contract awards were identified. Through further investigation, GSA found that some of the GSA employees involved in these procurements were engaged in misconduct and were issued disciplinary notices for their actions. These cases were the result of those proposed disciplinary actions. Several other personnel actions resulted in non-adverse actions, including official reprimands.

2. Who decides the cases at GSA?

The GSA Delegations of Authority permits the Heads of Services and Staff Offices and Regional Administrators to designate officials in their individual organization or region who are authorized to take disciplinary actions. Designated officials are usually in the line of authority over the disciplined employee. The type of disciplinary action taken determines who decides the matter. For example, warning and reprimand notices are usually issued by the first line supervisor. Suspension and removal actions require a proposal notice before a decision is rendered. Therefore, there is a proposing official and deciding official.

3. What is the procedure and how are they decided?

The Heads of GSA's Services and Staff Offices and Regional Administrators are responsible for the maintenance of discipline and adherence to the standards of conduct by employees under their jurisdiction. Immediate supervisors have the primary responsibility for discipline and initiating appropriate corrective action when it becomes necessary. When a supervisor suspects misconduct has occurred that supervisor conducts an inquiry to secure the facts needed to determine what disciplinary action, if any, is warranted.

As I mentioned previously, disciplinary action can take the form of a warning notice, an official reprimand or more serious penalties such as a suspension, a demotion to a lower grade or removal from Federal service. When an adverse action, such as a suspension, demotion or removal, is proposed the agency must comply with Title 5, Part 752 of the Code of Federal Regulations, which entitles an employee against whom such action is taken certain rights. These rights include the following: (1) an advance written notice stating the specific reasons for the proposed action; (2) a reasonable amount of time to reply orally and/or in writing to the charge(s) against him/her and to furnish affidavits and other documentary evidence in support of the reply; (3) to be represented by an attorney or other representative; and (4) a written decision and the specific reasons for that decision at the earliest practicable date. If the employee fails to make either a written and/or oral reply, the deciding official will make a decision based on the record as a whole. The decision is based on certain factors, prescribed by the Merit Systems Protection Board (MSPB), such as the employee's past disciplinary record, if any, his/her past work performance, length of service, the notoriety of the offense and the consistency of the penalty with those imposed upon other employees for the same or similar offenses.

Before applying these factors, the deciding official will make the determination as to which charges can be sustained based on the evidence of the record as a whole. The deciding official should make this decision independently, free of advice from the proposing official.

After making a determination on which charges to sustain, the deciding official must do a full analysis of the case to determine its outcome and then apply the relevant mitigating factors to the case at issue. In order to take an adverse action, the deciding official must make the determination that the misconduct at issue is severe and the penalty promotes the efficiency of the agency. Also, the penalty should be in accordance with the agency's penalty guide.

If an employee receives a suspension for longer than 14 work days, a demotion to a lower grade or removal from Federal service, he/she can appeal this decision to the MSPB within 30 calendar days of the effective date of the action. If the appeal proceeds to hearing, an Administrative Judge will decide whether the charges against the employee are sustained and, if so, whether the penalty imposed is reasonable.

The MSPB will not disturb the agency's choice of penalty unless the severity of it appears totally unwarranted in light of the relevant factors. If the deciding official fails to consider relevant mitigating factors, MSPB may mitigate the penalty to bring it within parameters of reasonableness, which is determined based on MSPB case law.

4. What were the final decisions?

Four GSA employees from the Great Lakes Region received the proposed adverse actions. All four actions were decided by the agency and all involved disciplinary actions against the individuals. Three of those cases have been appealed and settled.

The fourth has an appeal pending with the MSPB. The three settled cases resulted in one person being demoted from a GS-15 to a GS-13; one person being demoted from a GS-15 to a GS-14; and one person agreed to retire from Federal service in lieu of being demoted from a GS-14 to a GS-13.

The pending appeal also involves a full grade demotion.

MOVING FROM "GET IT RIGHT" TO EXCELLENCE IN ACQUISITION

Mr. Chairman and Members of the Subcommittee, excellence in acquisition is the top priority for GSA. Conducting acquisitions the right way is critical to everyone. In July 2004, the Administrator, in conjunction with the Department of Defense, launched the "Get it Right" program to help promote proper contracting practices. The initiative has led to the implementation of better controls across FTS nationwide, as well as individual Client Support Center management improvement plans. "Get it Right" has resulted in greatly increased attention to ensuring adequate competition, determining best value and utilizing and properly administering the appropriate contract vehicles. These efforts have been fully supported by GSA's management team and we believe the agency is making genuine progress in addressing the serious contracting deficiencies found in our reviews. As I discussed earlier, the management team in GSA's Great Lakes Region fully embraced the "Get it Right" initiative, and we have begun implementing a wide-range of program reforms in our procurements .

The "Get it Right" Plan is the foundation for Acquisition Excellence and is based on five objectives:

1. Secure the best value for Federal agencies and American taxpayers through an efficient and effective acquisition process, while ensuring full and open competition and instilling integrity and transparency in the use of GSA contracting vehicles.
2. Make acquisition policies, regulations and procedures clear and explicit.
3. Improve education/training of the Federal acquisition workforce on the proper use of GSA contracting vehicles and services.
4. Ensure compliance with Federal acquisition policies, regulations and procedures. Non-compliance is unacceptable!
5. Communicate with the acquisition community, including agencies, industry partners, the Office of Management and Budget, Congress and other stakeholders regarding the use of GSA contracting vehicles and services.

While the Get It Right Plan demonstrates our strong commitment to ensuring the proper use of GSA contracting vehicles and services in order to be in full compliance with Federal Acquisition Regulations and best practices, we view the "Get it Right" program as the means to an end. We are committed to excellence in acquisition at GSA and we know that that goal must begin with GSA's strong commitment to ensuring the proper use of GSA contracting vehicles and services in order to be in full compliance with Federal laws and regulations and best practices.

In addition to the regional and programmatic reforms put in place as a result of the audit, GSA has implemented better controls within FTS nationwide, and GSA has been

making genuine progress in addressing the serious FTS contracting deficiencies found in our reviews.

Our Office of the Chief Acquisition Officer (CAO) has updated policy guidance on doing business with other agencies. We are increasing the use of competition in the procurement process and raising our own goals for competitive contracting, including small businesses in acquisition strategies and the use of small businesses to achieve socio-economic goals. We are also clarifying how to account for other direct costs when ordering from a GSA schedule. In 2006, the CAO is launching a multi-year campaign to rewrite the General Services Acquisition Manual (GSAM) and will be updating our acquisition regulations to ensure we have clear and explicit rules on which our GSA customers and associates can rely. On the national level, we are also working on an interagency contracting workgroup that OMB's Office of Federal Procurement Policy has put in place that will once again move us toward a common understanding of our responsibilities, both internally and government wide. Also, GSA has begun a thorough assessment of our acquisition workforce to determine whether they have the skills to "Get it Right" and to achieve excellence in acquisition. Finally, to ensure that we are doing things right, we are working closely with our Inspector General's office in reviewing our procurements, and our CAO's office has been traveling to each of the regional offices, conducting Program Management Reviews (PMR) of contracting actions. These PMRs are not audits, but are independent peer reviews, performed on an annual basis by GSA acquisition professionals; and are designed to ensure that acquisitions functions are in compliance with all applicable regulations, policies and procedures, to provide acquisitions solutions, and to identify and share best practices.

CLOSING

Mr. Chairman and Members of the Subcommittee, in its audit, the OIG raised several concerns. You have heard from the OIG directly and I have outlined them for you today. Everyone at GSA, from our Administrator and top executives, to our acquisitions officials, to our program managers take these concerns seriously. Our "Get it Right" initiative demonstrates our commitment on a nationwide level and we are addressing them on a detailed level within the Region as well.

Thank you again for this opportunity to speak with you about this very important matter this afternoon. We are committed to serious reforms and we are proud of our progress in rectifying the problems discovered. I will be happy to answer any questions you may have.